

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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	§	
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	§	Examiner: Matthew T. Henning
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	§	
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APPLICATIONS TO THE FABRIC	§	
ENVIRONMENT	§	

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REPLY BRIEF

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I. STATUS OF CLAIMS

Claims 1–61 and 72–87 are rejected. The appealed claims are 1–61 and 72–87. Appellants appreciate the Examiner’s notation of the inadvertent typographical error in the appeal brief indicating that claims 27–87 were rejected.

II. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1–61, 72, and 76–78 stand rejected under 35 U.S.C. § 112, ¶ 2 for failing to point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1–13, 17–19, 35–47, 51–53, and 73 stand rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent 5,619,657 to Sudama et al. (“Sudama”). Claims 14–16, 20–21, 48–50, and 54–55 stand rejected under 35 U.S.C. § 103(a) as obvious over Sudama. Claims 22–31, 33–34, 56–61, and 76–87 stand rejected under 35 U.S.C. § 103(a) as obvious over Sudama in view of FIPS PUB 196 “Entity Authentication Using Public Key Cryptography” (“FIPS”). Claim 32 stands rejected under 35 U.S.C. § 103(a) as obvious over Sudama and FIPS in view of U.S. Patent 5,422,953 to Fischer (“Fischer”). Claims 72 and 74 stand rejected under 35 U.S.C. § 103(a) as obvious over Sudama in view of U.S. Patent 5,694,615 to Thapar et al. (“Thapar”). Claim 75 stand rejected under 35 U.S.C. § 103(a) as obvious over Sudama in view of applicant admitted prior art.

Appellants appreciate Examiner’s notation that the rejection of claims 72 and 76–78 under 35 U.S.C. § 112, ¶ 2 was inadvertently omitted from the Grounds of Rejection to be Reviewed on Appeal section of the originally-filed appeal brief. Appellants also note that these rejections were addressed in the argument section of the originally-filed appeal brief.

III. ARGUMENT

The following arguments are in rebuttal to the Examiner's Answer mailed March 14, 2008 and are supplementary to the originally-filed appeal brief. Appellants maintain the positions set forth in that brief in their entirety. Accordingly, failure to address a grounds of rejection in this reply brief should not be construed as acquiescence by Appellants to the Examiner's position.

A. Section 102(b) Novelty Rejections

1. Claim 1

As noted in the originally-filed appeal brief, claim 1 requires, among other limitations, "locating one or more nodes in a secure location," and Sudama contains no teaching or suggestion of this limitation. Previously, Examiner has contended that this limitation can be found in Fig. 2. As previously noted by Appellants, neither Fig. 2, nor the portions of the written description of Sudama that address Fig. 2 contain any teaching or suggestion relating to the location of any of the components, much less any teaching or suggestion that any such locations are secure locations. In response, Examiner has now, for the first time, stated that "the claims do not require 'a **physically** secure location' and 'a less **physically** secure location,' and as such the examiner has not read this into the claim language" (emphasis in original).

Appellants submit that physicality is inherent in the meaning of location, particularly as that term is used by Appellants. As noted in the § 112 arguments in originally-filed Appeal brief, the specification give examples of "a secure location" and "a less secure location" that are all physical, *e.g.*, locked rooms, enclosures, etc. Moreover, Examiner's own rejections under § 112 all seem to relate to physical locations.

However, Appellants also appreciate that the claims do not expressly recite physical location. Therefore, to the extent the Board adopts Examiner's construction and claim 1 would be allowable but for this limitation, the Board is requested to issue an opinion in accordance with 37 C.F.R. § 41.50(c) permitting Appellants to amend the claims in the manner suggested by Examiner, which they believe to be inherent in the limitation as written.

Additionally, as was also noted in the originally-filed appeal brief, claim 1 requires and Sudama fails to teach or suggest “determining a first list of nodes that may send or receive substantive communication in the secure network.” It appears that Examiner has adopted an overly-broad view of the term “substantive communication.” As noted in the originally-filed Appeal Brief, one of ordinary skill in the art would understand “substantive communication” to be distinct from system overhead. “Management operations,” as disclosed in Sudama may or may not be “substantive communication”; however, they are at most one type of substantive communication. The limitation at issue would be understood by one of ordinary skill in the art to refer to “a list of nodes that may send or receive [*any type of*] substantive communication in the secure network.” Conversely, Examiner appears to be reading this limitation as “a list of nodes that may send or receive [*some particular type of*] substantive communication in the secure network.” In the context of claim 1 this is of particular importance. Specifically, Sudama’s list does not foreclose the possibility of other hosts engaging in substantive communication on the network.

However, Appellants appreciate that the claims do not expressly recite “a list of nodes that may send or receive [*any type of*] substantive communication in the secure network.” Therefore, to the extent the Board adopts Examiner’s construction and claim 1 would be allowable but for this limitation, the Board is requested to issue an opinion in accordance with 37 C.F.R. § 41.50(c) permitting Appellants to amend the claims in a manner consistent with Appellants’ interpretation of the limitation as currently written.

2. Claim 35

Claim 35 requires, among other limitations, “a memory for storing ... device connection information specifying nodes or ports that may send or receive substantive communication in the secure network.” Appellants note that this limitation is similar to the limitation discussed immediately above. Examiner’s Answer suggests that the Examiner is interpreting this limitation differently from “a memory for storing ... device connection information specifying [**all**] nodes or ports that may send or receive [**any**] substantive communication in the secure network” (emphasis in original). Appellants submit that one skilled in the art would interpret the limitation as written to mean exactly the same thing as the language recited by Examiner because

any other interpretation would render the memory unsuitable for its use in controlling access to the secure network.

To the extent the Board adopts Examiner's construction, and claim 35 would be otherwise allowable, the Board is requested to issue an opinion in accordance with 37 C.F.R. § 41.50(c) permitting Appellants to amend the claims to expressly recite the language suggested by Examiner, which Appellants believe to be inherent in the language as written.

3. Claim 73

Claim 73 requires, among other limitations that "all of said devices carry[] a list of all devices allowed on the network." Similar limitations were discussed above with respect to claims 1 and 35. Therefore Appellants maintain the positions set forth in the originally-filed Appeal Brief and set forth above.

4. Claims 2–12 and 36–46

Dependent claims 2–12 depending from claim 1 and dependent claims 36–46 depending from claim 35 each include a limitation requiring, among other things, "succession of primary configuration node." As noted in the Appeal Brief, Sudama fails to teach this limitation. In fact, Sudama makes clear that, for example, if management server M1 failed, management server M2, from a lower level of the hierarchy would not be able to succeed M1 as a "primary configuration node" because there is no path for management operations to flow upstream. Examiner relies on this very teaching to support other rejections. Examiner's Answer states that "Sudama, in Col. 8, clearly shows that the lists in the global database, which is maintained in S1', establish a hierarchy of control in the network, in a downstream manner. The Examiner believes that this meets the limitation." Again, nothing in this concept says anything about "succession of the primary configuration node."

5. Claims 18–19 and 52–53

Dependent claims 18–19 and 52–53, depending from claims 1 and 35, respectively, require that a DCC list be distributed to *every node* in the secure network. Sudama does not disclose such a list. Column 8, ¶ 1 clearly states that "[t]hese lists, though maintained by a

global procedure, would preferably be stored and accessible locally by each management server....” Sudama’s lists are only stored by the management servers. The Examiner’s Answer expressly concedes this point on p. 26, lines 5–7. Examiner attempts to avoid the implication of this statement by referring to sub-networks S1, S2, S3, and S4 as “nodes”; however, this is inconsistent with the meaning of the term “nodes” that would be understood by those skilled in the art and is also inconsistent with Examiner’s use of the term “node” in formulating other rejections.

B. Section 103(a) Obviousness Rejections

Claim 76 requires, among other limitations, “at least one logical management access channel that may be disabled through network management control.” Examiner has contended that this limitation is taught by Sudama at col. 8, ¶ 4. When confronted with the plain language of the reference, which clearly specifies that upstream control paths do not exist, Examiner resorts to nearly metaphysical arguments attempting to reconcile paths that do not exist and paths that do exist but have been disabled.

Sudama simply provides no mechanism for an upstream channel. This is not a channel that can be disabled; it is the absence of a channel. This point can be no more clearly made. Therefore, the proposed combination fails to teach or suggest each limitation of claim 76, and the rejection of claim 76 is improper.

As regards claim 32, Examiner’s Answer states “Appellant has not contested the rejection of claim 32 under 35 U.S.C. § 103(a) in view of Sudama, FIPSA, and Fischer, and as such the examiner believes that this rejection should be maintained.” Appellants note that claim 30 depends indirectly from claim 1 which is separately patentable for the reasons set forth respect to claim 1 in the originally-filed appeal brief.

C. Conclusion

For the reasons stated above, and set forth in the originally-filed appeal brief, Applicants respectfully submit that the rejections should be reversed. Additionally, to the extent specific

claims have not been addressed, these claims depend from one or more claims that have been specifically addressed, and are therefore patentable for at least the same reasons as the claims specifically addressed. Applicants further believe that they have complied with each requirement for an appeal brief and for a reply brief.

In the course of the foregoing discussions, Applicants may have at times referred to claim limitations in shorthand fashion, or may have focused on a particular claim element. This discussion should not be interpreted to mean that the other limitations can be ignored or dismissed. The claims must be viewed as a whole, and each limitation of the claims must be considered when determining the patentability of the claims. Moreover, it should be understood that there may be other distinctions between the claims and the prior art which have yet to be raised, but which may be raised in the future.

If any fees are required or have been overpaid, please appropriately charge or credit those fees to Deposit Account Number 501922, referencing docket number 112-0039US.

Respectfully submitted,

/Billy C. Allen III/

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Filed Electronically

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